



Federal Communications Commission
Washington, D.C. 20554

December 23, 2014

Trinity Lutheran Church
c/o Travis R. Kearbey, Esq.
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Ste. 3600
St. Louis, MO 63102

Re: Case Identifier: CGB-CC-1265
CG Docket No. 06-181
Petition for Closed Captioning Exemption
Denial of Request for Reconsideration

Dear Mr. Kearbey:

By this letter, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) denies the letter seeking reconsideration filed by you on behalf of your client Trinity Lutheran Church (Trinity) of Cape Girardeau, Missouri.¹ The Reconsideration Request seeks reconsideration of the Bureau's February 4, 2014, letter ruling² denying Trinity an "economically burdensome" exemption from the FCC's closed captioning requirements for its program, *Living Hope*, pursuant to Section 79.1(f) of the Commission's rules. Trinity's Petition was filed on September 18, 2012, and assigned the Case Identifier Number CGB-CC-1265.³

I. Background

On September 18, 2012, the Bureau received a request from Trinity to be exempt from the Commission's closed captioning requirements with respect to its television program, *Living Hope*, a broadcast of the church's religious service. On November 13, 2013, the Bureau sent

¹ Letter from Travis R. Kearbey, Attorney, Bryan Cave LLP, to Perlesta Hollingsworth, Attorney, Disability Rights Office, CGB, (May 14, 2014) (Reconsideration Request).

² Letter from Perlesta Hollingsworth, Attorney, Disability Rights Office, CGB, to Trinity Lutheran Church, c/o Travis R. Kearbey, Bryan Cave LLP (Feb. 4, 2014) (Ruling).

³ Trinity had filed a previous petition for an exemption from the closed captioning on December 28, 2011. That petition was assigned Case Identifier Number CGB-CC-0475. It was dismissed without prejudice on June 5, 2012, because Trinity had failed to provide information sought by the Bureau in a letter dated March 7, 2012, concerning its petition. Three months after that dismissal, on September 18, 2012, the Bureau received a filing by Trinity that had attached to it a document dated April 2, 2012, which Trinity filed in response to the Bureau's March 7, 2012, letter. Along with that document Trinity filed a copy of a USPS Domestic Return Receipt indicating that the Commission received a filing from Trinity on April 5, 2012. Because Petition CGB-CC-0475 had been dismissed more than thirty days prior to the receipt of the September 18, 2012 filing, that filing was treated as a new Petition and given Case Identifier Number CGB-CC-1265. This decision pertains only to the Petition CGB-CC-1265.

Trinity a letter⁴ seeking additional information it needed in order to make a determination pursuant to its decision in *Anglers for Christ Ministries, Inc., et al.; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility*.⁵ Trinity responded on December 12, 2013, providing some of the requested information and making arguments contesting the legality of imposing closed captioning requirements on its program on both constitutional and statutory grounds.⁶ On February 4, 2014, the Bureau issued a decision dismissing, without prejudice, Trinity's petition.⁷ The reason for the dismissal was that the documentation of its financial status provided by Trinity did not contain the information sought in the Bureau's November 13, 2013, letter and that it failed to contain a second captioning quote for *Living Hope*, also requested in that letter. Trinity, by counsel, filed a request dated May 14, 2014, seeking reconsideration of the Bureau's February 4, 2014, dismissal.⁸

II. DISCUSSION

Section 405(a) of the Communications Act,⁹ as implemented by Section 1.106(f) of the Commission's rules,¹⁰ requires that a petition for reconsideration be filed within thirty days from the date of public notice of Commission action. Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's rules.¹¹ Because the decision of which Trinity seeks reconsideration was neither published in the Federal Register nor the subject of a released Public Notice, the thirty day time limit runs from the date appearing on the document, *i.e.*, February 4, 2014.¹²

Although the date on Trinity's reconsideration request, May 14, 2014, is more than thirty days from the date on the decision of which it seeks reconsideration, it was not received by the Commission until June 13, 2014.¹³ Either way, the Bureau finds that the petition was filed late. The United States Court of Appeals for the District of Columbia Circuit has consistently held

⁴ Letter from Perlesta Hollingsworth, Attorney, Disability Rights Office, CGB to Ronald P. Lessmann, D.D.S. for Trinity Lutheran Church, (Nov. 13, 2013) (November 13 Letter).

⁵ See *Anglers for Christ Ministries, Inc., et al.; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility*, CG Docket Nos. 06-181 and 11-175, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14955-56, ¶ 28 (2011) (*Anglers Reversal MO&O*). See also http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-323421A1.pdf, which the Bureau developed, based on the Communication Act, the Commission's rules, and Commission history and experience evaluating such petitions.

⁶ Letter from Travis R. Kearbey, Esq., Attorney, Bryan Cave to Perlesta Hollingsworth, Attorney, Disability Rights Office, CGB (Dec. 12, 2013).

⁷ Letter from Perlesta Hollingsworth, Attorney, Disability Rights Office, CGB to Travis R. Kearbey, Esq., Attorney, Bryan Cave LLP on behalf of Trinity Lutheran Church (Feb. 4, 2014).

⁸ Letter from Travis R. Kearbey, Esq., Attorney, Bryan Cave to Perlesta Hollingsworth, Attorney, Disability Rights Office, CGB (May 14, 2014).

⁹ 47 U.S.C. § 405(a).

¹⁰ 47 C.F.R. § 1.106(f).

¹¹ 47 C.F.R. § 1.4.

¹² 47 C.F.R. § 1.4(b)(5).

¹³ See Reconsideration Request as filed on the FCC's Electronic Filing Comment System:

<http://apps.fcc.gov/ecfs/comment/view?id=6017822846>. The date-stamp on the document indicates the date of June 13, 2014.

that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act,¹⁴ except where “extraordinary circumstances indicate that justice would thus be served.”¹⁵ We note that the filing requirement of Section 405(a) of the Act must be followed even if the petition for reconsideration is filed only one day late.¹⁶ Trinity has not attempted to show any extraordinary circumstances to justify its late filing. Trinity did not acknowledge that it did not file in a timely manner by, for example, requesting permission to submit its document past the statutory deadline. We must dismiss Trinity’s request for reconsideration as late-filed.

Accordingly, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, Trinity’s request for reconsideration is denied. This action is taken under delegated authority pursuant to Sections 0.141 and 0.361 of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.361.

Because Trinity’s Petition for a captioning exemption is dismissed without prejudice, Trinity may file a new petition, if needed. If Trinity files a new petition, the programming that is the subject of the new petition may again be exempt from the FCC’s closed captioning requirements while the new petition is pending. The Bureau will assign a new case identifier number to any new petition that is filed. For more information about filing a new petition, please visit <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements>. Your client’s new petition must provide the FCC with up-to-date and complete information and must contain all of the information, materials, or documents necessary to support your request. **Your client’s new petition may not incorporate by reference any information, materials, or documents that your client has previously submitted to the FCC.**

For more information about the closed captioning requirements, please visit this link: <http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements>. If you have additional questions pertaining to this letter or to the filing of an exemption request, please contact the FCC’s Disability Rights Office at captioningexemption@fcc.gov.



Gregory Hlibok
Chief, Disability Rights Office
Consumer & Governmental Affairs Bureau

¹⁴ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

¹⁵ *Gardner v. FCC*, 530 F.2d at 1091.

¹⁶ See, e.g., *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978); *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909 (1975).